

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THE SHERWIN-WILLIAMS
COMPANY,
v.
Plaintiff,
})
JB COLLISION SERVICES, INC., *et.
al.*,
al.,
Defendants,
and
THE SHERWIN-WILLIAMS
COMPANY,
v.
Plaintiff,
})
JTT, INC., *et. al.*,
Defendants.
})
})
Civil No. 13-CV-1946-LAB (WVG)
13-CV-1947-LAB (WVG)
ORDER FOLLOWING
DISCOVERY HEARING

I. BACKGROUND

On October 1, 2014, Defense counsel notified the Court of several discovery disputes, and on October 2, 2014, Plaintiff's counsel notified the Court of several additional disputes. On October 3, 2014, the Court set a briefing schedule and a

1 Discovery Hearing. (Doc. No. 52.) In its Order, the Court also set a telephonic
2 Discovery Conference for October 3, 2014, at 11:00 a.m., to discuss the upcoming fact
3 discovery deadline and the scheduling of depositions. Id. at 2.

4 On October 3, 2014, the Court held a telephonic Discovery Conference. Mr.
5 Jeffrey Wilson and Mr. Eddie Woodworth participated on behalf of Plaintiff, and Mr.
6 Paul Sorrentino and Mr. John Nordlund participated on behalf of Defendants. During
7 the Discovery Conference, **the Court informed the parties that it will not extend the**
8 **fact discovery deadline set for November 7, 2014.** See Scheduling Order; Doc. No.
9 29 at 2. The Court advised the parties to cooperate and complete all fact discovery
10 depositions by the fact discovery deadline, and set a schedule for the parties to follow
11 in an effort to resolve the deposition disputes.

12 On October 10, 2014, Defendants filed a Motion for Determination of
13 Discovery Disputes, which, among other disputes, included a discussion about the
14 deposition of Mr. David Cardenas. (Doc. No. 59.) Also on October 10, 2014, Plaintiff
15 filed a Motion for Determination of Discovery Disputes. (Doc. No. 61.) That same
16 day, Defendants filed a Motion for Determination of Discovery Dispute Regarding the
17 Deposition of David Sewell (Doc. No. 60), and Plaintiff lodged with the Court a
18 Declaration of Plaintiff's counsel, Mr. Wilson, describing the current health condition
19 of anticipated deponent, Mr. Cardenas.

20 On October 16, 2014, Plaintiff filed an Opposition to Defendants' Motion
21 Regarding the Deposition of Mr. Cardenas. (Doc. No. 67.) That same day, Plaintiff
22 filed an Opposition to Defendants' Motion Regarding the Deposition of Mr. Sewell.
23 (Doc. No. 68.) On October 17, 2014, Plaintiff filed a Supplemental Brief in Support
24 of its Motion for Determination of Discovery Disputes. (Doc. No. 69.) Also on
25 October 17, 2014, Defendants' filed an Opposition to Plaintiff's Motion for Determina-
26 tion of Discovery Disputes. (Doc. No. 70.) That same day, Plaintiff filed an
27 Opposition to Defendants' Motion for Determination of Discovery Disputes. (Doc. No.
28 71.)

1 On October 22, 2014, Defendants filed a Reply in Support of their Discovery
2 Motion. (Doc. No. 72.) Also on October 22, 2014, Defendants filed a Reply in Support
3 of their Discovery Motion related to Mr. Sewell's deposition. (Doc. No. 73.) That
4 same day, Plaintiff filed a Reply in Support of its Discovery Motion. (Doc. No. 74.)

5 On October 29, 2014, at 7:00 a.m., the Court held an in person Discovery
6 Hearing on the record. Mr. Wilson, Mr. Woodworth, and Mr. Michael Murray
7 appeared on behalf of Plaintiff, and Mr. Sorrentino and Mr. Nordlund appeared on
8 behalf of Defendants. Defendant, Mr. John Tyczki, was also present in the under-
9 signed's courtroom for the Discovery Hearing.

10 The Court has reviewed Defendants' Discovery Motion, Plaintiff's Opposi-
11 tion, Defendants' Reply, and all corresponding exhibits. The Court has also reviewed
12 Plaintiff's Discovery Motion, Defendants' Opposition, Plaintiff's Supplemental Brief,
13 Plaintiff's Reply, and all corresponding exhibits. Additionally, the Court has reviewed
14 both parties' briefing and Plaintiff's counsel's Declaration regarding the depositions
15 of Mr. Sewell and Mr. Cardenas. The Court has also reviewed other relevant
16 documents filed in these cases.

17 The fact discovery deadline is November 7, 2014, a mere nine days after the
18 Discovery Hearing. Given that the discovery deadline is looming, the Court deemed
19 it advisable to issue discovery rulings from the bench during the Discovery Hearing.
20 Based on a review of all of the above, the Court issued tentative rulings from the bench
21 at the beginning of the Discovery Hearing. After listening to the arguments asserted
22 by all counsel at the Discovery Hearing, the Court issued its final rulings from the
23 bench and discussed its reasoning and rulings with counsel. The parties shall comply
24 with the following Orders:

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1 **II. DEFENDANTS' DISCOVERY MOTION**

2 **A. DEPOSITION OF MR. DAVID SEWELL**

3 Defendants request to take the deposition of Mr. David Sewell. Mr. Sewell
 4 is hereby ORDERED to sit for a deposition. Mr. Sewell's deposition shall occur on or
 5 before November 7, 2014.

6 Alternatively, Mr. Sewell does not need to be deposed if: (1) Plaintiff
 7 stipulates that it waives all objections, including hearsay objections, at trial regarding
 8 Defendants' testimony concerning Mr. Sewell's representations/statements; and (2) Mr.
 9 Sewell cannot be called as a witness at trial.

10 **B. PLAINTIFF HAS OVER-DESIGNATED DOCUMENTS AS
ATTORNEYS' EYES ONLY**

11 Defendants request that the Court order that the designation of certain
 12 documents be downgraded from the designation of "Attorneys' Eyes Only" to
 13 "Confidential," to allow counsel to discuss the information with their clients. (Doc. No.
 14 59 at 7.)

15 **1. Sherwin-Williams Customer List-Supplemental Responses to
ROGs [Set One]** - The Court ORDERS that Plaintiff's customer list shall retain its
 17 current designation as "Attorneys' Eyes Only."

18 **2. PQR Summary Documents- Evidence of complaints made by
Defendants regarding the quality of Plaintiff's automotive paint products** - The
 20 Court ORDERS that Plaintiff's PQR Summary Documents shall be downgraded to a
 21 "Confidential" designation.

22 **3. Accounts Receivable Journal Voucher ("ARJV") Support
Records for Defendants, which show payments and discounts from Plaintiff to
Defendants following complaints** - The Court ORDERS that Plaintiff's Accounts
 24 Receivable Journal Voucher ("ARJV") Support Records for Defendants shall be
 26 downgraded to a "Confidential" designation.

1 **4. Sherwin-Williams Expense Appropriations and Related Contract
2 Formation Documents, which show Plaintiff's internal communications and
3 processes in the formation of the subject agreements** - The Court ORDERS that
4 Plaintiff's Expense Appropriations and Related Contract Formation Documents shall
5 retain their current designation as "Attorneys' Eyes Only."

6 **5. PQR Summary Documents-Other Sherwin-Williams Customers,
7 which evidence complaints made by Plaintiff's other customers regarding defects
8 similar to those experienced by Defendants and the occurrence of which Plaintiff
9 denies** - The Court ORDERS that Plaintiff's PQR Summary Documents for other
10 Sherwin-Williams Customers shall be downgraded to a "Confidential" designation.
11 However, Plaintiff shall redact the store names and customer details, as that information
12 shall retain its "Attorneys' Eyes Only" designation.

13 **6. Analytical Reports Attached to PQR Summary Documents,
14 which give analysis of the paint about which complaints of defects alleged by
15 Defendants have been made, as well as discussion of purported causes** - The Court
16 ORDERS that Plaintiff's Analytical Reports Attached to PQR Summary Documents
17 shall be downgraded to a "Confidential" designation.

18 **C. EXPANSION OF COURT'S PRIOR DISCOVERY ORDER: RFP
19 NO. 8**

20 Defendants request that the Court revisit its July 9, 2014, Order and order
21 Plaintiff to produce in response to RFP No. 8 all PQR Summary documents regarding
22 warranties submitted from all customers, nationwide, due to issues with Plaintiff's
23 AWX paint products during the time period of January 1, 2006 to the present. (Doc.
24 No. 59 at 9.)

25 The Court hereby DENIES Defendants' request to expand its July 9, 2014,
26 Order as to Defendants' RFP No. 8.

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1 **D. EXPANSION OF COURT'S PRIOR DISCOVERY ORDER: RFP**
2 **NO. 9**

3 Defendants request that the Court revisit its July 9, 2014, Order and order
4 Plaintiff to supplement its customer list in response to RFP No. 9 to include all
5 customers within the San Diego County, Riverside County, Imperial County, San
6 Bernardino County, Orange County, and Los Angeles County areas that purchased
7 Plaintiff's AWX automotive paint products pursuant to any sort of contract, whether
8 a verbal agreement, a month-to-month agreement, or in an exclusive requirements
9 (supply agreement) contract. (Doc. No. 59 at 10.)

10 The Court hereby DENIES Defendants' request to expand its July 9, 2014,
11 Order as to Defendants' RFP No. 9.

12 **E. TESTING DOCUMENTS**

13 Defendants request that this Court order Plaintiff to produce all testing
14 documents in response to Defendants' RFP No. 10. (Doc. No. 59 at 12.) Defendants
15 request testing documents from 2003 to the present. Defendants' request is GRANTED
16 IN PART and DENIED IN PART.

17 On or before **November 3, 2014**, at **5:00 p.m.**, Plaintiff shall produce testing
18 documents for AWX products only, from January 1, 2008, to the present. Plaintiff's
19 production shall include Application Reports, Analytical Reports, Project Reports,
20 Closing Reports, Quality System Reports, and Project Logs.

21 **F. DEPOSITION OF DAVID CARDENAS**

22 Defendants request that the Court order Mr. Cardenas' deposition to take place
23 at a date certain in 2015. (Doc. No. 72.) Defendants' request is GRANTED IN PART
24 and DENIED IN PART. Mr. Cardenas will be ordered to sit for a deposition when and
25 if he is physically able to be deposed.

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1 **III. PLAINTIFF'S DISCOVERY MOTION**

2 **A. DEFENDANTS SHOULD BE HELD IN CONTEMPT AND**

3 **SANCTIONED FOR LYING TO THIS COURT AND REFUSING TO**

4 **PRODUCE CERTAIN DOCUMENTS**

5 Plaintiff seeks a Court Order holding Defendants in contempt for allegedly

6 withholding discovery and lying to the Court. (Doc. No. 61-1 at 5, 10-11.) Plaintiff

7 also seeks reasonable attorney's fees for bringing its Discovery Motion. *Id.*

8 The Court takes Plaintiff's request for a contempt Order and sanctions under

9 advisement. On or before **November 3, 2014**, at **5:00 p.m.**, Plaintiff shall lodge with

10 the Court copies of the Keystone Automotive documents for an *in camera* review.

11 Plaintiff shall highlight the products that it believes Defendants purchased in violation

12 of their contracts with Plaintiff. The Court will issue an Order after conducting an *in*

13 *camera* review of the Keystone Automotive documents.

14 **B. DEFENDANTS SHOULD BE SANCTIONED FOR FAILING TO**

15 **PRODUCE A PREPARED RULE 30(b)(6) WITNESS**

16 Plaintiff seeks to recover attorneys' fees to retake the deposition of Defen-

17 dants' Federal Rule of Civil Procedure ("Rule") 30(b)(6) witness because the witness

18 was allegedly unprepared for the deposition. (Doc. No. 61-1 at 12.) Plaintiff's request

19 is DENIED.

20 **C. DEFENDANTS WERE IMPROPERLY INSTRUCTED NOT TO**

21 **ANSWER**

22 Plaintiff seeks to recover attorneys' fees to retake the deposition of Defen-

23 dants' Rule 30(b)(6) witness because the witness was allegedly improperly instructed

24 not to answer a question. (Doc. No. 61-1 at 12.) Plaintiff's request is DENIED.

25 **D. DEFENDANTS' CONDUCT WARRANTS ENTRY OF A**

26 **PROTECTIVE ORDER**

27 Plaintiff requests that this Court enter a protective order to prevent certain

28 documents from being de-designated, and to order Defendants to strictly adhere to the

29 protective order in place. (Doc. No. 61-1 at 14.) Plaintiff's request is DENIED. All

30 parties shall scrupulously comply with the current Protective Order.

E. DEFENDANTS' GAMESMANSHIP SEEKS TO DENY PLAINTIFF ITS RIGHT TO CONDUCT DISCOVERY

Plaintiff requests that, to the extent Defendants previously knew of the witnesses listed in their supplemental discovery responses served on October 9, 2014, Defendants should be precluded from relying on their testimony. (Doc. No. 61-1 at 17.) Plaintiff's request is DENIED.

F. DEFENDANTS' RECENT PRODUCTION OF NEARLY 3,000 PAGES OF DISCOVERY

On October 17, 2014, Defendants produced nearly 3,000 pages of discovery documents containing Defendants' business records and invoices with Keystone Automotive from 2008 to 2014. Plaintiff alleges that the records show that Defendants purchased tens of thousand of dollars of products that they have denied purchasing under oath throughout this litigation. Plaintiff claims that Defendants' actions are in contempt of court and reveal they have perjured themselves. In its Supplemental Brief filed on October 17, 2014, Plaintiff renewed its request that this Court sanction Defendants for their gross misconduct. (Doc. No. 69.)

As discussed in Section III(A) of this Order, the Court takes this issue under advisement, and shall conduct an in camera review of the Keystone Automotive documents.

IT IS SO ORDERED.

DATED: October 30, 2014

WVG
Hon. William V. Gallo
U.S. Magistrate Judge